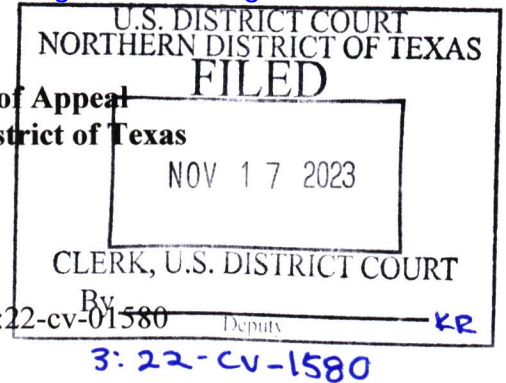


Motion for Extension of Time to File Notice of Appeal
United States District Court for the Northern District of Texas



David Adrian Smith, Plaintiff

v.

File Number 3:22-cv-01580

WWE, Inc., et al, Defendants

Motion for Extension of Time to File Notice of Appeal

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows

excusable neglect or good cause.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

Plaintiff entered a Motion for Extra Time for their response to the findings of the Magistrate Judge concurrently with their Response on September 13, 2023. The District Court entered an electronic order dismissing Plaintiff's Motion on September 14, 2023 with no further comment. Plaintiff made a good faith effort to enter a Notice of Appeal which would have been due by October 14, 2023 if due 30 days after the court's electronic order was issued. However, being an order dismissing Plaintiff's Motion under Rule 60, the deadline passed 28 days after the District Court issued its electronic order, or by October 12, 2023. Plaintiff asserts this misinterpretation, by a Pro Se and an IFP, constitutes Excusable Negligence. Under Rule 4(a)(5)(A)(i), Plaintiff enters this Motion for Extra Time within the 30-day deadline, and under 4(a)(5)(A)(ii), Plaintiff asserts they have established Excusable Negligence, meriting the District Court granting this Motion for Extra Time.

Plaintiff refers to the evidence provided for the District Court's consideration at the time of the Motion for Extra Time to consider their response to the findings of the Magistrate Judge. Again, Plaintiff recognizes that their providing this evidence in the manner and at the time they did is not according to the rules. However, Plaintiff once again refers to this evidence to illustrate for the court that Plaintiff is neither filing frivolous suit, nor is this matter without

merit, nor will further consideration of this matter prejudice the proceedings against any party. Plaintiff, at the end of this action, seeks the grant of leave to submit an amended complaint, which will include submission of evidence according to the rules.

Plaintiff enters the Notice of Appeal concurrently to this Motion so that if the District Court grants this Motion it may proceed immediately with processing Plaintiff's Notice of Appeal and forwarding to the 5th Circuit for said appeal.

Date:	November 14, 2023	Signature:	<u>(s)David Adrian Smith</u> Plaintiff (<i>Pro Se</i>)
		Address:	3917 Clubway Ln Farmers Branch, TX 75244
		Cell #:	214-235-9215
		Email:	<u>davidadriansmith@hotmail.com</u>

Statement of Service

Plaintiff has not made effort to serve this Motion on any other party as the underlying findings of the Magistrate Judge and Plaintiff's original complaint have not yet been served on nor response from any Defendants been included in the proceedings.

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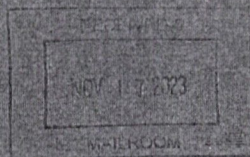
7020 2450 0002 0443 3657

FROM:

David A. Smith
3917 Clubway Ln.
Farmers Branch, TX
75244

TO:

District Clerk
ND of Texas
1100 Commerce St
#1452
Dallas, TX 75242



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